IN AND BEFORE THE FEDERAL ELECTION COMMISSION

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2004 DEC 20 D	

On behalf of Respondents)	ευυμ	ner 2	20 P 4: 42
Sandra McDade McRei, Inc.)	RE: Matter Under Review 5587	. 200h	
David Vitter for US Senate, William Vanderbrook, Treasurer)	RE. Watter Older Review 3367	ON DEC	RE FEDER/ COP DFFICE CC
Res	ponse to	Complaint	21 A	OF GENERAL STATES OF GENERAL S

This is filed on behalf of Sandra McDade, McRei, Inc., and David Vitter for U.S. Senate, William Vanderbrook, Treasurer (collectively hereafter "Respondents") in response to a Complaint filed by complaining party, John Miller, an individual who worked as an independent contractor making paid telephone calls for Respondent McRei, Inc.

The Complaint alleges that Respondents made certain communications in violation of the Federal Election Campaign Act of 1971, as amended, 2 USC §431 et seq. ("the Act"). Specifically, the Complaint alleges that Respondents violated the Act by failing to include a disclaimer in public communications identified in the Complaint. (2 USC § 441(d); 11 CFR §110.11).

Complaint Must Be Dismissed Against Respondents

Respondents hereby move the Commission to dismiss the Complaint against Respondents for the reason that there are no facts to support the Complaint against them and because Respondents have not violated any provision(s) of the Act.

McRei, Inc. is a polling and voter identification company which utilizes telephone communications to accomplish its work. Sandra McDade is the President, CEO and owner of McRei, Inc. Complainant John Miller was hired as an independent contractor by McRei, Inc. for the purpose of making telephone calls on behalf of McRei, Inc. and its various clients during 2004. One of its clients during the 2004 election cycle was the David Vitter for US Senate campaign, whose Treasurer is William Vanderbrook.

McRei, Inc. is engaged by clients, including political committees, to make various types of telephone calls, some of which are for purposes of persuasion and advocacy, others of which are in the nature of voter identification telephone calls, and still other telephone calls which are in the nature of survey research, opinion polling and candidate preference identification.

During the 2004 election cycle, David Vitter for US Senate retained McRei, Inc. to make several different types of phone calls: Advocacy and voter identification calls, the script for which is attached hereto as Exhibit A. Another type of calls were for the purpose of identifying undecided voters. The script for those calls (referred to as "Undecided Callbacks") is attached hereto as Exhibit B.

It is the Undecided Callbacks that are the apparent source of the Complaint.

Respondent McRei, Inc. has developed a proprietary process for identifying 'undecided' voters and transmitting that information to clients of the firm. The "Undecided Callback" calls are made for the purpose of identifying the truly undecided voters, segregating those voters by demographic profiles and transmitting to the clients the information regarding the "persuadeds" and the "undecideds" on a regular basis. Attached to this response as Exhibit C is a copy of the October 16, 2004 'undecided callback' report, which is divided into 3 parts: Vitter persuadeds, Undecideds and the Aggregate report. A copy of this report was/is provided on an ongoing basis to the client for whom such calls are/were made.

The David Vitter for US Senate campaign utilized the aggregated information for purposes of ascertaining the status of the campaign – whether there was movement among subsets of voters and the direction of such movement among various demographic groups. The "Undecided Callback" calls were one of numerous sources of voter information received and relied upon by the Vitter campaign to identify and classify voters for the campaign's overall objectives. The reports from McRei, Inc. constituted one component of a larger 'information gathering' program undertaken by the Vitter campaign which allowed the campaign to confirm other research, including polling data, by comparing the McRei, Inc. aggregated data to other demographic information about subsets of likely voters.

In order to obtain an accurate result from these calls for purposes of gleaning the true status of the campaign among various voter groups, it was/is necessary from a survey research perspective to advise the voter that the information sought in the telephone call is being elicited by a 'neutral' source rather than a particular campaign. Similar to other survey research paid for by political committees and candidates, the source is identified as the name of the polling or research company – not the candidate or committee for whom the survey is actually being conducted and which is paying for the phone calls.

PJB Media Research exists as a d/b/a of McRei, Inc. and is utilized as a survey research/polling entity for the purpose of making survey research and polling calls, including the proprietary type of 'undecided callback' calls at issue here.

As evidenced by the script attached as Exhibit B, all candidates for the US Senate were identified and rotated in order that no candidate would be treated as 'preferred' and no advocacy of any kind was included in the communication. No other information was obtained or requested during the call such as issue preferences. The sole purpose of the calls was to generate the most accurate reading as possible of the undecided voters and to deliver to the client, David Vitter for US Senate, the most pristine and unbiased result possible.

No express advocacy, no political advertising, no persuasion, no solicitation and no preference for any Senate candidate was included in the script of the 'undecided callbacks' telephone calls.

The 'undecided callbacks' type of telephone calls are not within the definition of 2 USC §441d and 11 CFR 100.11 requiring a disclaimer disclosing to the voter that the calls were paid for by David Vitter for US Senate.

Disclaimers are required "whenever a political committee makes a disbursement for the purpose of financing any communication through ...or any other type of general public political advertising, or whenever any person makes a disbursement for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through ... any other type of general public political advertising or makes a disbursement for an electioneering communication..." 2 USC §441d(a).

The Commission has historically adhered to an industry standard reflecting the principle that telephone calls solely in the nature of opinion polling which do not expressly advocate a candidate or indicate any candidate preference are not considered 'advertising' subject to the regulations requiring disclaimers. In Advisory Opinion 1999-27, the Alaska Federation of Republican Women ("the Federation"), requested an advisory opinion concerning the application of the Act and Commission regulations to the conduct of a presidential straw poll. In that AO, the Commission noted, "...Moreover, if the public media advertising for participation in the poll does not contain any message expressly advocating the election or defeat of a candidate, the advertisements need not include a disclaimer". See 2 U.S.C. 441d(a); 11 CFR 110.11(a)(1).

Nothing in the amendments to the Act contained in the Bipartisan Campaign Reform Act of 2002 ("BCRA") altered this principle.

Accordingly, absent any facts that the "Undecided Callbacks" calls were in the nature of advertising or promoting David Vitter's candidacy (which they did not) no disclaimer was required and the Complaint against Respondents Sandra McDade, McRei, Inc., and David Vitter for US Senate, William Vanderbrook, Treasurer, should be dismissed.

Respectfully submitted,

Clita Mitchell

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Counsel for Respondents

EXHIBIT A

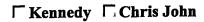
11/9/2004

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Vitter For U.S. Senate - Newly Created

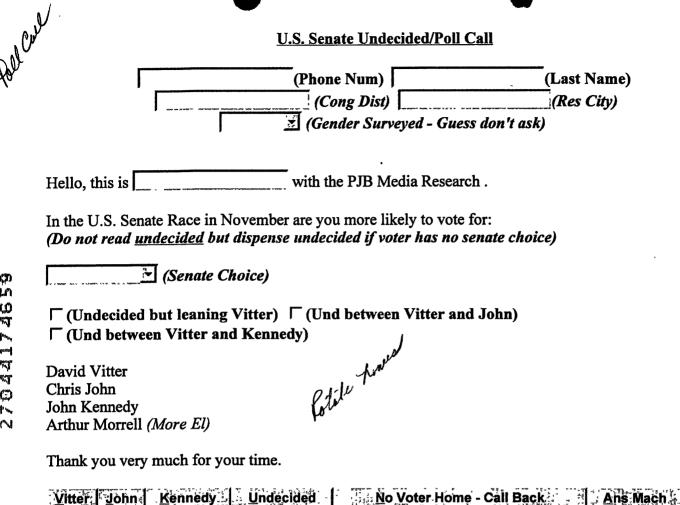
09/30/04

Phone Number	LName	City
House Number	Street	Parish
V1 First Name	V2First 1	Name
V3 FN	V4FN	
Hello, am I speaking with	(Voter Surveyed)	
This is and I'm have decided to work to elect David Vitt David has a concrete record of fighting p		bring good jobs to Louisiana.
Can David Vitter count on your vote on	election day?	
(If yes) That's wonderful. Thank you ve	ry much for your time. Good by	e (end all favorable calls here.,
(If undecided) I can understand that, qu to be the most important issue facing out AN ISSUE CHECK THE BOX TO THE OR DISAGREE WITH ONE OF DAVID THE SCRIPT QUICKLY.)	r nation today. (DO NOT READ T LEFT OF THE ISSUE. IF THEY	THE LIST - IF THEY HAVE Y DO NOT HAVE AN ISSUE
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And last, if the election for president we George W. Bush?	re held today would you vote for	John Kerry, Ralph Nader or
□ Kerry □ Nader □ Bush □ PresUr	nd	
Thank for your time and we really do ho to vote.	pe you will consider David Vitte	r for U.S. Senate when you go
(If no or against) Thank you for your time	ne.	
(If they happen to say they are for Chris ask them!!!!!!)	John or Kennedy for Senate chec	ck the appropriate box - Don't



Undecided Against Eavorable Not interested No Voter Home/Bad Time Call Back Bad Number

dhtmled0: 11/9/2004

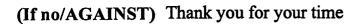


Note: If asked, you are in Louisiana doing a state-wide survey. You are not allowed to indicate who you support because that will cause the poll to be invalid. Due to safety concerns do not say what city you are in.

Business Number

EXHIBIT B

Not Interested



(If they happen to say they are for Chris John or Kennedy then check the appropriate box but don't ask THEM)

□ John Kennedy □ Chris John

UNDECIDED AG	AINST FAVORABL <u>E</u>	NOT INTERESTED	day .
NO VOTER HOME	BAD NUMBER	LeaningFayorable	BadTimeCallBack
ANS MACH			
		(specific comments)	

Daily Campaign Figures

Campaign Vitter - CD5

Date of Report 10/16/04

	Daily	Cummulative
Favorable	729	12,855
Leaning Fav	97	2,294
Against	99	1,327
Undecided	489	7,591
Not Interested	637	8,676
Bad #/Voter Doesn't live there/No Reg Voter	152	2,847
No Voter Home	1,086	13,124
TOTAL		
TOTAL	3,289	48,714

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Vitter Vitter Vitter Vitter Vitter	Vitter Vitter Vitter Vitter Vitter	Vitter Vitter Vitter Vitter	Vitter Vitter Vitter Vitter Vitter	Vitter Vitter Vitter Vitter Vitter	Vitter Vitter Vitter Vitter Vitter Vitter Vitter Vitter Vitter
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	1 9.86E+09 5.5E+08 1 9.86E+09 5.5E+08 1 9.86E+09 5.5E+08 1 9.86E+09 5.1E+08 2 9.85E+09 5.1E+08 1 3.38E+09 5.1E+08	37E+09 2: 37E+09 2: 26E+09 : 04E+09 :	25E+09 25E+09 25E+09 26E+09 26E+09 26E+09 26E+09	86E+09 86E+09 86E+09 86E+09 85E+09 86E+09 86E+09 .85E+09 .85E+09 .37E+09
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Vitter	Vitter	Vitter	Vitter
2 2 25E+09 3002410	2 3.37E+09 23004192	3.38E+09 23003523	1 9.85E+09 40013270
0	0	0	0
0	0	0	0
0	0	0	0
0	0	0	0
0	0	0	0
0	0	0	0
0	0	0	0
0	0	0	0